In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 864

CHARLEY WILLIAMS, DONALD L. WASHINGTON, AND WILLIAM JONES, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (R. 38)[1] is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on December 17, 1963 (R. 38). A petition for rehearing was denied on January 24, 1964 (R. 40–46). The petition for a writ of certiorari was filed on February 24, 1964. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

[1] "R." refers to the court of appeals' record; "Tr." refers to the trial transcript of testimony in the district court.

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QUESTIONS PRESENTED

1. Whether a search warrant for the entire premises of a small house was valid.

2. Whether there was probable cause for issuance of a warrant for the arrest of petitioner Jones.

STATEMENT

Petitioners Williams, Washington and Jones, together with co-defendant Bernice E. Blandon, were charged in a three-count indictment in the United States District Court for the District of Columbia with operation of a lottery, possession of numbers slips, and maintaining gambling premises, in violation of 22 D.C. Code 1501, 1502 and 1505 (R. 4–5). The court, trying the cases without a jury, found petitioners guilty on all three counts (R. 6, 22). Jones was sentenced to imprisonment for a period of from six to eighteen months; Washington for a period of one to three years; and Williams for a period of from eight to twenty-four months (R. 23–25). On appeal (R. 26–27), the convictions were affirmed (R. 38).

On various dates between July 3 and July 31, 1962, officers of the Metropolitan Police Department observed petitioners arrive at a house at 134 R Street, enter the premises with brown paper bags and pockets bulging, and leave with their pockets empty.[1] Williams was seen taking numbers slips from unidentified persons (R. 28–36). On four occasions Jones was seen entering 134 R Street with his pockets bulging (R. 29, 31, 33, 36).

[1] All three petitioners had been arrested on previous occasions for operation of a lottery (R. 36).

The house at 134 R Street is about 18 feet wide and 40 feet deep. It has one room in the basement, a bedroom, two sitting rooms, and a kitchen on the first floor, and four bedrooms and a bathroom on the second floor (R. 19). A telephone address directory listed co-defendant Bernice Blandon and her daughter as the sole occupants of the premises (R. 15; Tr. 211–212). The structure was not licensed as a rooming house (R. 16).

Based upon an affidavit containing a detailed account of observations by the two police officers during their investigation, a search warrant was issued for the entire premises at 134 R Street, Northeast, occupied by Bernice Blandon, and warrants were obtained for the arrest of all three petitioners (R. 28–37, 1–2). In the execution of the warrants on August 1, 1962, the officers, after entering the house, saw Bernice Blandon with numbers slips in her hand in a hallway and arrested her (R. 11–12; Tr. 36–39, 215–216). The officers then heard the "scrambling of feet in the basement" (Tr. 216). Jones ran out of the house into the back yard where officer Goldston arrested him. Washington emerged from the basement and officer Goldston arrested him. Williams came out of the basement, re-entered the rear door on the first floor, and hid in a clothes closet where another officer arrested him. All three were then taken to the basement (R. 12–13). The search of the premises resulted in the seizure of numbers gambling paraphernalia in the basement and on the first floor (R. 16, 17; Tr. 64, 71, 79, 86, 95, 102, 150, 173, 181–185).

Bernice Blandon told the officers that she did not have a rooming house license, but that she did have some roomers on the second floor (R. 16, 17). While the entire house was searched, no gambling paraphernalia was seized on the second floor (R. 17, 18, 14). Bernice Blandon told the officers that the few numbers taken from her on the first floor were hers, but that the gambling paraphernalia belonged to the three petitioners to whom she had rented the basement for three days a week at $30 a week, the money having been paid by Williams (R. 17–18; Tr. 68–69).

The court denied the motion of Jones to quash the arrest warrant against him (R. 7–9), defense motions to quash the search warrant for the entire premises at 134 R Street (R. 19, 20) and motions to suppress evidence (R. 21).

ARGUMENT

1. The search warrant described the place to be searched with sufficient particularity to enable an officer to ascertain and identify the place intended. *Steele* v. *United States No. 1*, 267 U.S. 498, 503. Where, as here, a dwelling from its outward appearance is a single-family residence, it is enough for the search warrant to describe the place by its address alone. *Minovitz* v. *United States*, 298 F. 2d 682. (C.A.D.C.); *United States* v. *Santore*, 290 F. 2d 51, 66–67 (C.A. 2), certiorari denied, 365 U.S. 834; *Townsend* v. *United States*, 253 F. 2d 461, 464–465 (C.A. 5). Petitioners attempt to distinguish *Minovitz* on the ground that, in the instant case, no investigation was conducted to determine whether the privacy of others would be invaded by obtaining the arrest

warrant for the entire premises (Pet. 8). However, the police had ascertained that the telephone directory showed that the co-defendant Bernice Blandon and her daughter were the sole occupants of the premises. There was, moreover, no license for operation of a rooming house to put the police on notice that there were individual roomers in the house.

The judge upheld the validity of the search warrant only after personally viewing the premises. Since the structure was a relatively small dwelling house,[3] the judge thought it impossible to expect an officer to designate the particular rooms in which the numbers operation was being carried on without actually entering the house (R. 19–20). To hold otherwise would be to permit the operators of an illegal gambling business to immunize themselves from a search by secretly renting rooms in a house which from all outward appearances is a single-family residence.

2. Contrary to the contention of petitioner Jones, the warrant for his arrest was issued on probable cause. There was no impropriety in incorporating by reference the officers' affidavit used to obtain the search warrant. It is immaterial that the affidavit also referred to activities by Williams and Washington, since they were of the same general nature as those attributable to Jones and showed the usual

[3] The court reasoned that the relatively small premises could not be compared to a "loft building or to an apartment house or anything of that sort" (R. 20). That fact distinguished *United States* v. *Epstein*, 33 F. 2d 982 (E.D.N.Y.) (Pet. 8), where a search warrant was ordered quashed, since the premises there were a "loft building" and the defendant occupied only a part of the fourth floor.

procedure in a numbers gambling operation. The affidavit recited at least four occasions on which Jones was seen entering 134 R Street with his pockets bulging (R. 29, 31, 33, 36). The affidavit also mentioned a previous arrest of Jones for operating a lottery (R. 36). Thus, there was sufficient cause to believe Jones involved in the gambling operation conducted from the R Street premises.

Petitioner Jones suggests that even if his arrest in the back yard were legal, the officers brought him into the basement in an improper attempt to use the arrest as a basis for the search and seizure of evidence in the house (Pet. 11–13). The contention is manifestly unsound, for the officers had a search warrant which authorized the search of the premises.

CONCLUSION

For the reasons stated it is respectfully submitted that the petition for a writ of certiorari should be denied.

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